



Scottish Government Consultation on Hate Crime Legislation

Community Justice Scotland (CJS) welcomes the opportunity to comment on the consultation on hate crime. CJS would also like to record our thanks to the Scottish Government (SG) officials who came to present the key features of the consultation at a recent CJS Board meeting.

Community Justice Scotland

CJS was established with a duty to promote the National Strategy for Community Justice¹.

The vision for community justice is underpinned by the following principles which we have considered in deliberating our response:

- People must be held to account for their offences, in a way that recognises the impact on victims of crime and is mindful of risks to the public, while being proportionate and effective in preventing and reducing further offending.
- Re-integrating those who have committed offences into the community, and helping them to realise their potential, will create a safer and fairer society for all.
- Every intervention should maximise opportunities for preventing and reducing offending as early as possible, before problems escalate.
- Community justice outcomes cannot be improved by one stakeholder alone. We must work in partnership to address these complex issues.
- Informed communities who participate in community justice will lead to more effective services and policies with greater legitimacy.
- High quality, person-centred and collaborative services should be available to address the needs of those who have committed offences, their families, and victims of crime.

CJS has an interest in this consultation given the focus of the National Strategy for Community Justice (National Strategy) on the achievement of better outcomes for

¹ <https://www.gov.scot/publications/national-strategy-community-justice/pages/2/>

people who come into contact with the justice system. We recognise the impact of hate crime and the harm that it brings to individuals and communities.

Purpose of Hate Crime Legislation

The consultation seems to be based on the premise that criminalisation will be effective in changing behaviours. The rationale for such a view is not clear.

Research on Hate Crime: Causes, Motivations and Effective interventions for Criminal Justice Social Work² highlights 'what works' in addressing the causes of hate crime. This includes incorporation of cultural/diversity awareness raising, reflecting on attitudes/beliefs and acknowledging the impact of hate crime on victims and communities through restorative justice approaches.

Restorative Justice

CJS strongly advocates a restorative justice approach to hate crime. This would assist with tackling the causes of the hate in all its manifestations rather than solely focussing on punishment. This aligns with the Christie³ principles of prevention and early intervention.

We would strongly support the introduction of restorative justice approaches which could lead to better outcomes for perpetrators, victims and communities, specifically addressing the needs of the victim and also to a potential reduction in offending. We would cite the case of the Welsh rugby player Gareth Thomas whose recent attack was widely reported in the media⁴. Although this would have been recognised as a hate offence on grounds of sexuality, he refused to press charges and instead advocated a restorative justice approach. He was quoted as saying that he hoped the teenager who attacked him due to his homosexuality would "learn" from the experience. He said he had opted to deal with his attacker using restorative justice - when a victim talks to the perpetrator about the harm they have caused - "*because I thought they could learn more that way than any other way*".

A further example of the effectiveness of restorative justice approaches in relation to hate crime is the experience of Jo Berry⁵ whose father Sir Anthony Berry, was killed in the bombing of the Grand Hotel, Brighton. She met the bomber, Patrick Magee, who was sentenced for his part in planting the Brighton bomb and released as part of the Good Friday Peace Agreement in 1999. She has now shared a platform with Patrick Magee over 100 times and their example has inspired others to choose to work together to understand and address the causes of hate crime.

² Rania Hamad, Hate Crime: Causes, Motivations and Effective Interventions for Criminal Justice Social Work, Centre for Youth & Criminal Justice, University of Edinburgh, City of Edinburgh Council, June 2017 <https://cycj.org.uk/wp-content/uploads/2017/06/Hate-Crime-causes-and-motivations.pdf>

³ Christie Commission on the future delivery of public services, June 2011 <https://www.gov.scot/publications/commission-future-delivery-public-services/pages/4/>

⁴ <https://inews.co.uk/news/gareth-thomas-hate-crime/>

⁵ <http://www.buildingbridgesforpeace.org/about-building-bridges-for-peace/jo-berry-founder/>

We acknowledge that in certain situations a restorative justice approach may not be appropriate. We would stress that any such approach needs the clear consent of both parties and cannot proceed without the consent of the victim.

Potential Net Widening

CJS wishes to highlight the potential risk for net-widening from extending statutory aggravations. Creating more aggravations will not in itself achieve the outcome of a Scotland free from hate. Nor will it achieve a reduction in hate crime or future offending unless accompanied by measures aimed at reintegration and rehabilitation. The purpose of extending the list of aggravations seems to be aimed at punishing the symptoms rather than addressing the causes of hate. The impact of such aggravations may in fact lead to a person being labelled e.g. as a racist in the longer term, affecting their ability to secure future employment or education. Such toxic designations may exacerbate their exclusion.

Education and Awareness Raising

The consultation does not clearly define what is meant by 'hate' although some examples are given on page 3. As per Rania Hamad's research⁶ *'People may not be truly motivated by hate for their victims, and there is potential for obscuring the everyday 'ordinary experiences of prejudice that people may encounter.'*

There is also the danger of criminalising language that is in common use in some of our communities without providing the necessary public education and awareness campaigns to change such attitudes and behaviours, which can often be inter-generational.

This is further complicated by the current political climate and the sometimes inflammatory language which is widely reported in the media, e.g. such as that arising from the current Brexit debate. When the language and actions of those in positions of public leadership can reinforce attitudes that may be viewed as encouraging hate then it may be unreasonable to expect the wider public to be clear as to what constitutes acceptable language and behaviour. This highlights a tension between stirring up hatred and notions of free speech which are complex. Education and awareness raising measures may be more effective than creating more legislation.

Impact of proposed statutory aggravations

CJS wishes to highlight the fact that aggravated sentences can extend sentence length. There is a concern therefore that we are talking about custody and an increase in punitive measures whereas the key issue should be how to deal with the causes underlying offending behaviour to prevent a recurrence. Approaches to reducing hate crime should follow the principles of the National Strategy⁷ which aims to ensure that people are held to account for their offences in ways that help to prevent and reduce further offending. The split between the crime/aggravation is not clear. A question we would wish to raise is what part of a sentence refers to the aggravation as opposed to the crime?

⁶ Rania Hamad, op cit.

⁷ National Strategy op cit.

Regarding the proposed statutory aggravation on the grounds of gender, the rationale for all genders being covered is not clear. We would support a non-legislative approach building on the existing Equally Safe Strategy. We note that the option for a proposed standalone offence relating to misogyny may provide an alternative that would be developed outwith this hate crime legislation. We would suggest that any such proposal be subject to further specific consultation in due course.

On the issue of creating a statutory aggravation on grounds of age, the critical issue identified in the consultation appears to be one of vulnerability rather than age per se. There is already legislation relating to age discrimination and again the rationale for the creation of a new statutory aggravation is not clear. We would contend that these issues are matters that require greater public education rather than additional legislation given age discrimination legislation exists.

Creating additional statutory aggravations in relation to hate has the potential to make the perpetrator's future access to employment and education opportunities more challenging given the need to fully disclose such convictions for a much longer period than would otherwise be the case. Again this seems to be tackling the symptoms rather than the causes.

There are no examples in the consultation from other countries demonstrating improved outcomes where such provisions have been introduced. It may be worthwhile undertaking further research.

In conclusion CJS's view is that an effective way to engage with someone who exhibits this sort of criminal behaviour is to sentence according to the crime committed and to invest and provide initiatives which will achieve an understanding of the crime and rehabilitation of any hate displayed. This should be supplemented by broader information and tolerance campaigns to raise awareness.

Finally we would support the position that any legislation will need to be scrutinised by the legal profession to ensure it is practicable and deliverable in summary as well as solemn cases.

Community Justice Scotland
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